

RICHARD W. ECKELS (ON RECONSIDERATION)

IBLA 81-145

Decided June 23, 1982

Petition for reconsideration of the Board's decision in Richard W. Eckels, 62 IBLA 1 (1982), on appeal from a decision of the Idaho State Office, Bureau of Land Management, dismissing a protest against issuance of oil and gas lease (I-14795) and rejecting oil and gas lease offer (I-15821) in part.

Reconsideration granted. Prior Board decision modified. Decision of BLM reversed.

1. Oil and Gas Leases: Bona Fide Purchaser

The protection afforded a bona fide purchaser of an oil and gas lease applies only where consideration has been paid. An unperformed obligation to pay the assignor is not generally sufficient value. Receipt by the purchaser of notice that a lease is subject to cancellation prior to payment of the obligation to the assignor which the purchaser has assumed will bar bona fide purchaser status even if the assignee thereafter pays the obligation.

APPEARANCES: David B. Soper, Esq., for petitioner Phillips Petroleum Company; Kent E. Peterson, Esq., for appellant; Georgia Dee Mattison, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Counsel for Phillips Petroleum Company has petitioned for reconsideration of the Board's decision in this case, cited as Richard W. Eckels, 62 IBLA 1 (1982). The Board held in that decision that appellant Eckels had raised material issues of fact not resolved by the record, made a prima facie showing that Phillips was not a bona fide purchaser of the lease, and that, hence, an evidentiary hearing was required to determine whether Phillips qualified as a bona fide purchaser. Specific issues which the Board directed to be heard before the Administrative Law Judge included the question of whether consideration was paid by Phillips to the assignor, Georgia D. Mattison, and if so, when this was accomplished.

Phillips contends on petition for reconsideration that no hearing is required because petitioner holds its interest in the lease as a bona fide purchaser, citing in support thereof the agreement of petitioner to pay the assignor bonus consideration in the amount of \$19,200 plus an overriding royalty of 5 percent, which contract was accepted by the assignor on August 12, 1980. In addition to this agreement, petitioner has tendered a copy of a check dated January 12, 1982, payable to the order of assignor in the amount of \$19,200 which purports to be payment of consideration for the lease assignment. Assignor Mattison has also petitioned for reconsideration asserting that her lease should not be canceled because she made the lease offer in good faith, any violation of the 640-acre rule was inadvertent, and that she has a property interest in the lease. The assignor indicates that the lease was sold to Phillips with the understanding that payment of the bonus consideration would be delayed at assignor's request until such time during 1981 as she requested payment and that this was the reason the check was not drawn until January 12, 1982.

Counsel for lease offeror Eckels has responded to the petition for reconsideration asserting that protection afforded a bona fide purchaser arises only where consideration has actually been paid and that "an unperformed obligation is not value sufficient to entitle the obligor to protection as a bona fide purchaser." Eckels argues that where purchaser acquires actual or constructive notice of a legal challenge to the validity of a lease prior to payment of the obligation, assignee is not entitled to bona fide purchaser protection if he thereafter pays the consideration. Eckels contends that Phillips has had notice of the defect in the lease assigned to it since the BLM decision of September 8, 1980, was served upon it and that consideration was not paid until January 12, 1982. Accordingly, Eckels asserts that Phillips does not qualify as a bona fide purchaser and that the Board on reconsideration should order the Mattison/Phillips lease (I-14795) canceled and issuance of a lease pursuant to Eckel's lease offer (I-15821) to the extent of conflict with lease I-14795.

The petition for reconsideration is granted since the documentation tendered in support of the petition establishes the time of payment of consideration for the assignment, which fact is dispositive but was not disclosed by the record before the Board when we issued our decision and ordered a hearing. The other material facts are set forth in the Board's prior decision in this case and need not be repeated here. The issue raised by this appeal and the petition for reconsideration is whether Phillips qualifies as a bona fide purchaser of the lease under the statutory protection afforded such purchasers, 30 U.S.C. § 184(h)(2) (1976), so as to preclude cancellation of the lease even though the lease held by assignor was subject to cancellation for violation of the 640-acre rule.

[1] The general rule is that bona fide purchaser protection applies only where consideration has actually been paid, and an unperformed obligation is not value sufficient to entitle the obligor to bona fide purchaser protection. 77 Am. Jur. 2d, Vendor and Purchaser § 706 (1975); see McDonald v. Belding, 145 U.S. 492 (1892). The court in Winkler v. Andrus, 614 F.2d 707, 712 (10th Cir. 1980), expressly recognized that the date of payment of consideration is the relevant date for determination of the bona fides of the assignee according to the general rule, but did not rule on the point

in issuing its decision since there was no distinction in the knowledge of defects in the lease possessed by assignee on the date of the assignment and assignee's knowledge on the date when consideration was paid. The corollary to the general rule requiring payment of consideration is that receipt by the purchaser of actual or constructive notice of an outstanding interest or defect in title before payment of the obligation which the purchaser has assumed will preclude entitlement to bona fide purchaser status even if the assignee thereafter pays the obligation. 77 Am. Jur. 2d, Vendor and Purchaser § 706 (1975), see Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981) aff'd sub nom. Geosearch v. Watt, Civ. No. C81-208K (D. Wyo. Jan. 11, 1982). A purchaser who has not paid consideration before receiving notice of the adverse right cannot claim priority thereto as a bona fide purchaser even though he had previously received a transfer of legal title. 5 H. Tiffany, The Law of Real Property § 1304 (3rd ed. 1939).

It is clear from the record that Phillips had notice of the defect upon receipt of the Bureau of Land Management (BLM) decision of September 8, 1980, disclosing that the lease had been issued in error in violation of the 640-acre rule and requiring Phillips to show cause why the lease should not be canceled. The record indicates this decision was received by Phillips on September 10, 1980. Although Phillips had an executory contract to purchase the lease from August 12, 1980, when Mattison accepted its offer, no consideration was paid by Phillips prior to September 10, 1980, when it learned that the Mattison lease was subject to cancellation. Payment of consideration for the lease assignment was not made until January 12, 1982, long after Phillips had notice that the lease was subject to cancellation and that the issue was being litigated through this administrative appeal filed by Eckels on November 20, 1980. Notice of the defect in the lease prior to payment of consideration precludes Phillips from qualifying as a bona fide purchaser.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the prior decision of the Board in this case is modified to reflect that the decision of BLM must be reversed, the lease (I-14795) issued to Mattison and assigned to Phillips must be canceled, and the lease offer of appellant Eckels for the lands in conflict should be considered on remand.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

